

Christopher M. Humes Esq., Nevada Bar No. 12782
William D. Nobriga, Esq., Nevada Bar No. 14931
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
Telephone: 702.382.2101
Facsimile: 702.382.8135
Email: chumes@bhfs.com
Email: wnobriga@bhfs.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BOARD OF TRUSTEES OF THE
CONSTRUCTION INDUSTRY AND
LABORERS HEALTH AND WELFARE
TRUST; THE BOARD OF TRUSTEES OF
THE CONSTRUCTION INDUSTRY AND
LABORERS JOINT PENSION TRUST; THE
BOARD OF TRUSTEES OF THE
CONSTRUCTION INDUSTRY AND
LABORERS VACATION TRUST; and THE
BOARD OF TRUSTEES OF THE
SOUTHERN NEVADA LABORERS
LOCAL 872 TRAINING TRUST,

Plaintiffs,

v.

SENTINEL MAINTENANCE OF LAS
VEGAS, LLC, a Nevada limited liability
company, SMI, LLC, a Nevada limited
liability company

Defendants.

CASE NO.: 2:22-cv-00565-JCM-NJK

**MOTION TO SEEK LEAVE TO PROVIDE
REVISED CALCULATION OF DAMAGES**

AND

REQUEST FOR ENTRY OF JUDGMENT

Plaintiffs, Board of Trustees of the Construction Industry and Laborers Health and Welfare Trust, the Construction Industry and Laborers Joint Pension Trust, the Construction Industry and Laborers Vacation Trust, and the Southern Nevada Laborers Local 872 Training Trust (collectively, the “Trust Funds”) file this motion to seek leave to provide a revised damages calculation representing amounts owed by Sentinel Maintenance of Las Vegas, LLC and SMI,

1 LLC, jointly and severally, to the Trust Funds and request that the Court enter a proposed order
2 for judgment. This filing is based on the Employee Retirement Income Security Act of 1974
3 (“ERISA”), the Court’s recent ruling on the Parties’ Motion for Summary Judgment (ECF No.
4 69), the pleadings on file in this case, and the points and authorities below.

5 **I. Argument.**

6 On March 27, 2024, this Court issued an order granting the Trust Funds’ Motion for
7 Summary Judgment and denying the Defendants’ Motion for Summary Judgment. *See* ECF No.
8 69 (the “Order”). In the Order, the Court permitted the Trust Funds to seek leave to provide an
9 updated calculation of damages and ordered that the Trust Funds provide a proposed judgment.
10 *See id.* at 19-21. The Trust Funds submit both below and also demonstrate that the post-judgment
11 interest rate should be set at the rate included in the Trust Funds’ governing documents.

12 **A. Revised calculation of damages.**

13 The Trust Funds respectfully seek leave to provide an updated damages calculation to this
14 Court. If granted leave, the Trust Funds submit the outline of current damages immediately
15 below.

16 As the Court found, Defendants are delinquent in paying \$972,795.81 in employee benefit
17 contributions as detailed in the revised audit. The revised audit also states that Defendants owe
18 \$327,118 in interest, but only calculates interest through June 30, 2023. *See* ECF No. 45, at Ex.
19 35. Additional interest has accrued through the date of the instant filing. Given that the Trust
20 Funds’ Collection Policy and Procedures provide an interest rate of 14% (*see id.* at Ex. 40 at §
21 III(B)), the daily amount of interest accruing is \$373.13.¹ Since the revised audit, 277 days have
22 passed, making the additional interest \$103,356 (rounded to the nearest dollar). The updated
23 amount of interest is therefore \$430,474, as of April 2, 2024.²

24 Similarly, the liquidated damages have also increased. Liquidated damages are either 20%
25 of the delinquent contributions or the amount of the interest, whichever is higher. *See* 29 U.S.C. §
26 1132(g)(2)(C). Here, 20% of the delinquent contributions is \$194,479, which is less than the

27 ¹ $\$972,795.81 * .14 / 365 \text{ days} = \373.13

28 ² $\$103,356 + \$327,118 = \$430,474$

1 amount of interest. Liquidated damages have also increased to \$430,474.

2 Taking these amounts, and adding the \$7,810 awarded in audit fees, the Trust Funds
3 respectfully request that the Court utilize the updated amount of damages and find that
4 \$1,841,553.81³ is owed to the Trust Funds by Defendants in its order granting judgment.

5 **B. Post-judgment interest should be set at the rate in the Collection Policy, which**
6 **is 14%.**

7 The post-judgment interest rate in the judgment should be set at 14%, as dictated by the
8 Trust Funds' governing documents. While a default post-judgment interest rate is provided in 28
9 U.S.C. § 1961, the Ninth Circuit Court of Appeals has held that "[a]n exception to § 1961 exists
10 when the parties contractually agree to waive its application." *Fidelity. Fed. Bank, FSB v. Durga*
11 *Ma Corp.*, 387 F.3d 1021, 1023 (9th Cir. 2004). In ERISA actions seeking delinquent employee
12 benefit contributions, multiple district courts in the Ninth Circuit have found that the interest rate
13 listed in the benefit plan's governing documents should be the post-judgment interest rate. *See*
14 *Trustees of the S. California IBEW-NECA Pension Plan v. Arce*, No. 2:22-CV-00748-CAS-KSX,
15 2022 WL 1620200, at *6 (C.D. Cal. May 23, 2022) ("pursuant to 29 U.S.C.A. § 1132(g)(2), the
16 Court finds that post-judgment interest is appropriate, at the same rate [as the plan's governing
17 documents]."); *Bd. of Trustees of Laborers Health & Welfare Tr. Fund for N. Cal. v. Shade*
18 *Const. & Eng'g*, No. C 06-6830 PJH, 2007 WL 3071003, at *10 (N.D. Cal. Oct. 19, 2007) ("Until
19 paid (whether pre-judgment or post-judgment), Plaintiffs are entitled to a rate of 1.5% per month
20 for the unpaid contributions (rather than the rate provided by 28 U.S.C. § 1961)."); *Moreno v.*
21 *Casrik, Inc.*, No. C 05-1250 MJJ (JL), 2006 U.S. Dist. LEXIS 33346, at *18 (N.D. Cal. May 25,
22 2006) (report and recommendation) (using the plan document interest rate in an ERISA
23 contributions collections case).

24 The Seventh Circuit of Appeals has also addressed this issue. *Cent. States, Se. & Sw.*
25 *Areas Pension Fund v. Bomar Nat., Inc.*, 253 F.3d 1011, 1019 (7th Cir. 2001). In *Bomar*, a party
26 "contends that this award was in error because 28 U.S.C. § 1961, not the pension trust agreement,
27 should govern the calculation of post-judgment interest." The Seventh Circuit found, however,

28 ³ \$972,795.81 + \$430,474 + \$430,474 + \$7,810 = \$1,841,553.81

1 that the Defendant had agreed to the plan's trust agreement, that the interest rate in the
2 plan document was applicable and noted that "[i]t is well established that parties can agree
3 to an interest rate other than the standard one contained in 28 U.S.C. § 1961." *Id.*

4 As such, the proposed judgment attached to this filing provides that post-judgment interest
5 will accrue at 14%.

6 **C. Proposed judgment.**

7 Pursuant to Federal Rule of Civil Procedure 58(d) and as directed by the Court in its
8 Order, the Trust Funds request entry of judgment in this matter in accordance with the Court's
9 Order and the updated calculation of interest and liquidated damages provided above. A proposed
10 order granting judgment this request for judgment is attached at Exhibit 1.

11
12 Dated: April 2, 2024

BROWNSTEIN HYATT FARBER SCHRECK, LLP

13 /s/ Christopher M. Humes

14 Christopher M. Humes, Esq.

Nevada Bar No. 12782

15 William D. Nobriga, Esq.

Nevada Bar No. 14931

16 100 North City Parkway, Suite 1600

17 Las Vegas, Nevada 89106-4614

18 Attorneys for Plaintiffs
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CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I certify that I am an employee of Brownstein Hyatt Farber Schreck, LLP and that on April 2, 2024, I served a true copy of the foregoing **MOTION TO SEEK LEAVE TO PROVIDE REVISED CALCULATION OF DAMAGES AND REQUEST FOR ENTRY OF JUDGMENT** via the Court's CM/ECF System upon:

Lawrence J. Semenza, III, Esq.
Jarrod L. Rickard, Esq.
Katie L. Cannata, Esq.
SEMENZA KIRCHER RICKARD
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803

Pro Hac Vice
Michael J. Underwood, Esq.
Greg M. Daughterty, Esq.
PORTER WRIGHT MORRIS & ARTHUR
LLP
41 S. High Street, Suite 3100
Columbus, Ohio 43215
Telephone: (614) 227-2274

Attorneys for Defendants

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Ebony Davis

An Employee of Brownstein Hyatt Farber Schreck, LLP

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**INDEX OF EXHIBITS TO MOTION TO
SEEK LEAVE TO PROVIDE REVISED
CALCULATION OF DAMAGES**

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REQUEST FOR ENTRY OF JUDGMENT

1. Exhibit 1 – Proposed Order

EXHIBIT 1

PROPOSED ORDER

BROWNSTEIN HYATT FARBER SCHRECK, LLP
 100 North City Parkway, Suite 1600
 Las Vegas, NV 89106-4614
 702.382.2101

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**ORDER GRANTING
 ENTRY OF JUDGMENT**

On March 27, 2024, this Court issued an order granting the Plaintiffs', the Boards of Trustees of the Construction Industry and Laborers Health and Welfare Trust, the Construction Industry and Laborers Joint Pension Trust, the Construction Industry and Laborers Vacation Trust, and the Southern Nevada Laborers Local 872 Training Trust (collectively, the "Trust

Funds”), motion for summary judgment and denying the Defendants’, SMI, LLC and Sentinel Maintenance of Las Vegas, LLC, Motion for Summary Judgment. ECF No. 69. In that order, this Court found that the Defendants were liable to the Trust Funds for delinquent employee benefit contributions, interest, liquidated damages and audit fees. The bases for the Defendants’ liability to the Trust Funds, as outlined in the Order, are that (1) Sentinel Maintenance of Las Vegas, LLC assumed a collective bargaining agreement (“CBA”) that requires contributions be made to the Trust Funds; (2) Defendants satisfied the elements required to find an alter ego relationship between the two and therefore both Defendants are bound by the provisions of the aforementioned CBA; and (3) Defendants satisfied the elements required to find that the two Defendants are a single employer, also making them both bound by the CBA.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, based on the evidence provided to the Court in the Trust Funds Motion for Summary Judgment (ECF No. 45) and their Revised Calculation of Damages (ECF No. 70), that the clerk of court enter judgment in favor of Trust Funds and against SMI, LLC, and Sentinel Maintenance of Las Vegas, LLC, jointly and severally, for the following amounts:

Contributions: \$972,795.81

Interest: \$430,474

Liquidated Damages: \$430,474

Audit Fees: \$7,810

TOTAL: \$1,841,553.81

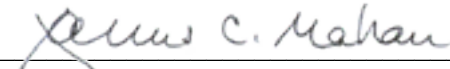
IT IS FURTHER ORDERED that post-judgment interest shall accrue on the delinquent employee benefit contributions at the rate of 14%.

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1 IT IS FURTHER ORDERED that the Trust Funds may bring a motion to recover
2 attorney's fees and costs in accordance with 29 U.S.C. § 1132(g)(2)(D) and the applicable Federal
3 Rules of Civil Procedure.

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5 DATED April 26, 2024.

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8 JAMES C. MAHAN
9 UNITED STATES DISTRICT JUDGE
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